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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/749,036	12/28/2000	Veronique Ferrari	05725.0832-00	5474
22852	7590	05/05/2004	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 1300 I STREET, NW WASHINGTON, DC 20005			HOWARD, SHARON LEE	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/749,036	FERRARI ET AL.	
	Examiner	Art Unit	
	Sharon L. Howard	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 February 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 92-230,235-242,245-248,250,251,253,256-259,262,263,269,273-275,279-287 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

Continuation of Disposition of Claims: Claims pending in the application are 92-230,235-242,245-248,250,251,253,256-259,262,263,266,267,269,273-275 and 279-287.

Continuation of Disposition of Claims: Claims rejected are 92-230,235-242,245-248,250,251,253,256-259,262,263,266,267,269,273-275 and 279-287.

Examiner acknowledges receipt of the Amendment, remarks and three months extension of time filed on 2/12/04.

Claims 92-230,235-242,245-248,250,251,253,256-259,262,263,266,267,269,273-275,279-287 are pending.

Specification

The amendment filed 2/12/04 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: No evidence that the particular amount of the specific ingredient Parleam oil is an error. There are additional ingredients present in which applicant has not established these remaining eight ingredients to be correct.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 102

Claims 92-230,235-242,245-248,250,251,253,256-259,262,263,269,273-275,279-287 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Pavlin (U.S. Patent No. 5,783,657) and Strianse (U.S. patent No. 3,148,125).

Pavlin teaches a structuring polymer consisting of a low molecular weight, ester-terminated polyamide resin combined with a low-polarity liquid hydrocarbon to form a transparent (gel) composition (see abstract and col.15, lines 12-15). Pavlin teaches that the polyamide resin has a softening point of 80 C to about 130 C (col.7, lines 32-35).

Pavlin teaches an ester-terminated polyamide of the formula (1) as claimed, wherein the ester groups comprises about 10% to about 50% of the ester and amide groups (col.4, lines 1-67). Pavlin also teaches a carbonyl group (col.6, lines 8-65), a hydrocarbon having 10 to 30 carbon atoms (col.15, lines 23-25) consisting of mineral oil (col.15, lines 26-44), fatty acid esters (col.15, lines 59-67, col.16, lines 1-33) which comprises a pendant fatty chain with a polymer, having alkyl or alkenyl groups comprising at least four carbon atoms (col.5, lines 3-22). Pavlin discloses carboxylic acids (col.16, lines 23-29) and a method for applying the gel composition to the skin (col.14, lines 30-47). Pavlin teaches lipstick, makeup, skin moisturizers, hair care products, sun care products and deodorant/antiperspirant products which comprises the gel composition (col.14, lines 37-47). Pavlin also discloses using other ingredients such as colorants, hardeners, perfumes, strengtheners and wax (col.17, lines 24-29). Pavlin teaches that gel hardness is judged qualitatively (col.17, lines 55-56).

With respect to the silent teaching of the hydrophilic/lipophilic balance value, the teaching is inherent, since the prior art teaches that the ester-terminated polyamide form gels with low polar (nonvolatile) liquid hydrocarbons at room temperature (col.13, lines 47-58 and col.15, lines 12-25).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The claims above are rejected under 35 U.S.C. 103(a) as being unpatentable over Pavlin ('657) in view of Strianse (U.S. Patent No. 3,148,125).

Pavlin is discussed above.

Pavlin does not teach ingredient (ii), which recites "at least one pasty fatty substance, wherein said at least one pasty fatty substance comprises at least one liquid fraction and at least one solid fraction at room temperature", but the patent is drawn to lipsticks (see col.3, lines 31-36 and at col.14, lines 29-41).

However, Strianse teaches a clear lipstick comprising lanolin alcohols (col.3, line70) and fatty acid esters such as oleates, mono laureates and linoleates (col.3, lines 48-53), which read on a pasty fatty substance.

The expected result would be an anhydrous lipstick composition comprising a structuring polymer and a pasty fatty substance.

It would have been within the skill of the ordinary practitioner at the time the invention was made to use the teachings of Pavlin in the manner taught by Strianse. One having ordinary skill in the art would have been motivated to modify the composition of Pavlin to include a pasty fatty substance, because Pavlin teaches an anhydrous composition comprising a transparent gel composition which comprises a structuring polymer consisting of an ester-terminated polyamide resin combined with a liquid hydrocarbon.

Response to Arguments

Applicant's arguments filed 2/12/04 have been fully considered but they are not persuasive. Applicant argues that there is no motivation in either reference to combine

at least one pasty fatty substance, wherein said at least one pasty fatty substance comprises at least one liquid fraction and at least one solid fraction at room temperature with the composition of Pavlin, no *prima facie* case of obviousness has been established.

In response to applicant's argument, there is motivation to combine the references. Both references teach lipsticks comprising fatty acid esters which read on a "pasty" fatty substance. Pavlin teaches fatty acid esters (col.15, lines 59-67, col.16, lines 1-33). Strianse teaches fatty acid esters such as oleates, mono laureates and linoleates (see col.3, lines 48-53). Both references are within the same field of endeavor and each of the references teach the same composition as applicant. Given the scope of what's being claimed, it remains the position of the examiner The term "pasty" does not distinguish in any manner absent a showing in any unexpected result, since the prior art is in the same field of endeavor and admittedly the prior art teaches a multitude of formulations and does not describe the exact formulations contemplated by applicant.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

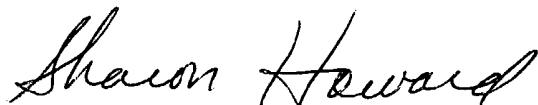
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon L. Howard whose telephone number is (571) 272-0596. The examiner can normally be reached on 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sharon Howard
April 30, 2004

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
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